No.....

United States
Circuit Court of Appeals
For the Ninth Circuit.

E. E. Wiley,
Appellant,

vs.

United States of America,
Appellee.

BRIEF OF APPELLANT.

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STATEMENT OF CASE.

An oral argument was made in court on October 8, 1934, in support of appellant's motion for leave to file amended assignment of errors. At that time the court ordered the motion submitted on briefs, and instructed the appellant to file his brief.

Appellant E. E. Wiley was indicted and convicted for violation of 18 U. S. C. A. 73, and 88. He was sentenced to serve twenty-two years in the Federal penitentiary. Through his attorney, a petition for appeal and order allowing an appeal, was duly filed, together with certain assignments of error. Counsel for the appellant failed to observe the rules of the District Court relating to time allowed for filing a bill of exceptions. After the time

expired application was made to the District Court for an order extending time to file a bill of exceptions. The application was denied, and the appellant substituted his present attorney for those who represented him during the period when the time ran against him in not filing the bill of exceptions. The subsequent attorney, his present counsel, filed a second application for leave to file a bill of exceptions, in the United States District Court. The application was denied. Thereupon counsel filed a petition for leave to file a petition for a writ of mandamus in the Circuit Court of Appeals. The motion was argued by counsel for the appellant and the United States. The petition was denied and an opinion filed.

Counsel for the United States moved to have the appeal docketed and dismissed, there being no record before the court. The denial of the application for leave to file a bill of exceptions limited the record for appeal to such an extent that assignments of error relating to errors committed during the trial of the case were eliminated from consideration on appeal. The appellant was granted leave to file a motion for leave to file an amended assignment of errors, assigning only such errors as appeared upon the indictments. A brief was filed in support of that motion.

The court filed an opinion on November 26, 1934, granting leave to file an amended assignment of errors. The case was set down on December 20, 1934, for hearing upon the merits of the amended assignments of error. The appellant was authorized to file a new or additional brief in accordance with the rules of court. It is pursuant to that authority that this brief is filed.

ASSIGNMENT OF ERRORS.

Assignment of errors was filed as to all indictments except Indictment No. 1192-C. This indictment charges a conspiracy to violate 18 U. S. C. A. 73. In this respect counsel for the appellant is satisfied that the indictment is good, for the reason that the object of the conspiracy need not be fulfilled. The overt acts alleged in the indictments, together with the charging parts are sufficient to charge an offense against the United States, to-wit, violation of 18 U. S. C. A. 88. It is the further opinion of counsel that this case comes within the decision of *Meadows v. U. S.*, 11 Fed. (2) 718, which case was decided by the United States Circuit Court of Appeals for the Ninth Circuit. The indictment in the *Meadows* case charged a conspiracy and is comparable to the instant case.

The other counts of the indictments fall within three classifications for the purpose of this brief as follows:

I. Counts of indictments charging violations of 18 U. S. C. A. 73 where the exhibits attached thereto showing photostatic copies of the reverse sides of the registered liberty bonds have inscribed thereon in handwriting only the names of the registered owners of said bonds.

II. Counts of the indictments charging violation of 18 U. S. C. A. 73 where the exhibits attached thereto showing the photostatic copies of the reverse sides of the registered liberty bonds have inscribed thereon in handwriting the names of the registered owners of the bonds and the name of a subscribing witness in the official form prescribed upon the reverse side of the bond.

III. Counts of the indictments charging violations of 18 U. S. C. A. 73 wherein it is charged that the defendants "did utter and publish as true * * * forged and counterfeit orders and writings in words and figures as set out in," the other counts of indictments, "with intent then and there to defraud the United States."

The amended assignments of errors relating to the counts of the indictments classified into three groups are as follows:

I. Referring to the first classification of charges in indictments, Indictment No. 11926-C has been selected as a form of count falling within that group. The assignments of errors to that form of counts are as follows:

A. Liberty Bond No. 618609, a photostatic copy of which appears in the first count of the indictment, for value received was issued to E. Widman and registered in his name, as appears from the exhibits to count one of the indictment. The bond was his property and the signing of his name on the back of the bond would not constitute an offense against the United States.

B. It does not appear from the reverse side of the bond that the United States could have been defrauded, because it is apparent from the provisions on the reverse side of the Liberty Bond that it could not have been transferred or assigned.

II. Referring to the second classification of charges in indictments, Indictment No. 11932-C has been selected as a form of count falling within that group. Assignment of errors to that form of counts are as follows:

A. Liberty Bond No. 462452, a copy of which appears in the first count of the indictment, for value received was issued to H. W. Hawley and registered in his name as appears from the exhibits in count 1 of the indictment. The bond was his property, and the signing of his name upon the back of the bond would not constitute an offense against the United States.

B. The indictment does not charge that the defendant E. E. Wiley forged or counterfeited insertions in transfer form on the reverse side of the bond. Without such insertions the said bond could not be transferred or assigned.

C. That by insertions in the transfer form on the reverse side of the bond the United States could not have been defrauded, for the reason that the provisions on the reverse side of bond restrict the transfer and assignment of the bond.

III. Referring to the third classification of charges in indictments, count five of Indictment No. 11930-C has been selected as a form of count falling within that group. The assignment of errors to that count is as follows:

A. The fifth count of the Indictment No. 11930-C does not charge an offense against the United States in that the forgery upon the back of the Liberty Bond of the name of H. C. Hawley is not a completion of the offense alleged in the indictment, to-wit, 18 U. S. C. A. 73.

The foregoing assignments of errors cover the forms of counts charged in each of the indictments except the one charging conspiracy.

ARGUMENT.

The first assignment of errors will be considered. This includes the counts of the indictment where the photostatic copies of the Liberty Bonds attached have inscribed on the reverse side the forged signature of the registered owner.

The indictments with reference to counts of this form charge that the defendant forged and counterfeited a certain order and writing for the purpose of obtaining and enabling other persons to obtain and receive from the United States of America, its officers and agents, the sum of one thousand dollars ($1,000.00), that is to say:

> "The said defendants at the time and place aforesaid did knowingly, wilfully, unlawfully, feloniously, and falsely and with the intent aforesaid, sign and endorse and cause and procure to be signed, forged and endorsed, and wilfully aided and assisted in the signing, forging and endorsing on the back of said order and writing the name H. C. Hawley, payee of said order and writing."

An examination of the front side of one of the Liberty Bonds in this group shows the following:

> "The United States of America for value received promises to pay to H. C. Hawley or registered assign the sum of One Thousand Dollars on October 15, 1938, and to pay interest on said principal sum at the rate of four and one-quarter per cent per annum from April 15, 1930, and April 15 and October 15

of each year, until the principal hereof shall be payable at the Treasury Department, Washington, or at the holders' option, at any agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for the purpose. The principal and interest hereof are payable in United States gold coin of the present standard of value. This bond is one of a series of four and one-quarter per cent gold bonds of 1933-1938 authorized by an act of Congress approved September 24, 1917, as amended, and issued pursuant to Treasury Department circular No. 121, dated September 28, 1918, to which reference is hereby made for a statement of the further rights of the holders of bonds of said series as fully and with the same effect as if herein set forth. All or any of the bonds of said series may be redeemed, at the pleasure of the United States, on or after October 15, 1933, at par and accrued interest, as in said circular provided. This bond does not bear the circulation privilege."

The reverse side of the Liberty Bonds provides for the transfer of the bonds unregistered. The form as printed upon the backs of the bonds restricts the negotiation of registered Liberty Bonds. The restrictive language follows:

"In order to effect the transfer of the within registered bond, the registered owner or someone duly authorized to act for him, must go before one of the officers authorized by the Secretary of the

Treasury to witness assignments, must establish his identity, and in the presence of such witnessing officer must execute an assignment using the above form. The officers authorized to witness assignments of registered bonds of the United States are the following: Judges and clerks of United States courts; United States District Attorneys; collectors of customs; collectors of internal revenue; assistant treasurers of the United States; executive officers of Federal Reserve banks (and their branches), of National banks, and of other banks and trust companies incorporated under the laws of any state, authorized by such bank or trust company to perform acts attested by the seal of such bank or trust company. Assignments may also be made at the Treasury Department. Notaries public are not authorized to witness assignments. If in a foreign country the assignment should be made before a diplomatic or consular representative of the United States. In all cases the officer before whom the assignment is executed and acknowledged must add his official designation, residence and seal, if he has one, same being affixed to the bond. When the assignment is made by a corporation, the corporation must be named as the assignor; when by a guardian, trustee, executor, administrator, an officer of a corporation, or by anyone in a representative capacity, proof of his authority to act must be produced to the officer before whom the assignment is made and must accompany the bond. Assignors must be identified to the satisfaction of the officer before

whom the assignment is made as known and responsible persons."

A further observation of the reverse side of the Liberty Bond shows a handwritten signature purporting to be the signature of H. C. Hawley. The indictment charges that the signature was forged, and that said forgery constitutes a false making of a certain order and writing for the purpose of receiving from the United States and its officers and agents the sum of one thousand dollars.

The portions of the foregoing printed matter appearing upon the Liberty Bonds, pertinent for the argument set forth herein, are, "The United States of America for value received promises to pay to H. C. Hawley or registered assign etc. * * * This bond does not bear the circulation privilege." (Printed upon front of bonds.) The reverse sides provides a transfer form for registered bonds. It provides for the assignment of the bonds only in the manner and form prescribed. In addition to the signature of the registered owner, a witness designated by the instrument itself must subscribe to and witness the signature of the registered owner who signs the assignment form. To effect an assignment the registered owner or authorized agent must, in the presence of a witnessing officer, execute an assignment using the form inscribed upon the reverse side of Liberty Bonds. Thus the instrument by its own terms restricts the circulation and negotiability of Liberty Bonds and makes them assignable only.

Liberty Bonds Are Not Negotiable.

There is a marked distinction between negotiability and assignability. Liberty Bonds are not negotiable. The Negotiable Instruments Law (being an Act to Establish a Law Uniform with the Laws of Other States on that subject) provides the following elements must be present in the form of a negotiable instrument.

(1) It must be in writing.

(2) Must contain an unconditional promise or order to pay a sum certain in money.

(3) Must be payable on demand or at a fixed or determinable future time.

(4) Must be payable to order or to bearer; and

(5) Where an instrument is addressed to a drawer, he must be named or otherwise indicated therein with reasonable certainty. (N. I. L. Sec. 1.)

An analysis of a Liberty Bond shows that the fourth element is missing. It is not payable "to order or to bearer" and is therefore non-negotiable. A non-negotiable instrument can only be assigned and not be negotiated. The provisions appearing upon the reverse side of a Liberty Bond restrict its assignment for the protection of the registered owner and the obligor, the United States of America. Redemption of Liberty bonds exhibited in the indictments, can be made only to the registered owners.

The indictments charge in substance that the names of the registered owners were forged upon the reverse side of the Liberty Bonds. However, the charge of the forgery of that writing alone, could not create a situation where

any person other than the registered owner, could receive any sum of money from the United States. If payment cannot under the circumstances be made to anyone, other than the registered owner, the United States cannot be defrauded.

The offense of forgery of the writing for the purpose and with the intent of obtaining and receiving money from the United States as prohibited by 18 U. S. C. A. 73, as charged in the first count of the indictment was not complete without the execution of the second form. To constitute a violation of that section the offending act must be one reasonably calculated as being able to induce the government to part with money. In this instance the forged writing did not purport to conform to the conditions precedent, before the payment of money by the United States to an assignee or transferee.

Liberty Bonds Must Be Assigned in Form Prescribed by Law.

The Secretary of Treasury was authorized by law to issue Liberty Bonds in such forms and subject to such terms and conditions as he may from time to time prescribe. Act of September 24, 1917, Chap. 56, Sec. 1, 40 Stat. 288, as amended by the Act of April 4, 1918, Chap. 4, 40 Stat. 502.

Pursuant to said authority, the Secretary of Treasury on July 31, 1923, issued Treasury circular No. 300 containing regulations with respect to Liberty Bonds, prescribing the mode and effect of making assignments.

Section 27 of Treasury circular No. 300, dated July 31, 1923, provides:

> "Redemption of registered bonds: Registered bonds which have become due and payable should first be assigned to the 'Secretary of Treasury for payment' (Executed as per regulations). Any such registered bonds should after assignment, be presented and surrendered to the Treasury Department, Divisions of Loans and Currency, Washington, D. C. or to any Federal Reserve Bank or branch. . . . If assignment for redemption is made by the registered holder of record, payment will be made to such rgistered holder at his last address of record, unless written instructions to the contrary are received from such registered holder. If assignment for redemption is made by an assignee holding under proper assignment from the registered holder of record, payment will be made to such assignee at the address specified in the form of advise. Assignment in blank, or other assignments having similar effect, will be recognized, and in that event payment will be made to the person surrendering the bonds for redemption, since under such assignments the bonds become in effect, payable to bearer."

Section 28 of Treasury circular No. 300, dated July 31, 1923, provides as follows:

> "Assignments of U. S. registered bonds must be executed by the registered owner or his duly authorized representative who should go before one of the officers authorized by the Secretary of the Treasury to witness assignments, establish his identity, and in the presence of such witnessing officer execute an assignment on the form appearing on the back of the bond. If the assignment is made by one other

than the registered owner, appropriate evidence of the authority of such person must be produced and must accompany the bond, unless already on file in the Treasury Dept."

Section 36 of Treasury circular No. 300, dated July 31, 1923, provides in part as follows:

"* * * Witnessing officers must satisfy themselves as to the identity of the person executing the assignment, and the person executing the assignment must actually appear before the witnessing officers. Witnessing officers will be held to strict accountability in these respects, and will be expected to respond in the event of any loss resulting from want of care on their part. In all cases the witnessing officer must affix to the assignment his official signature, title, address, and seal, and the date of the assignment; etc."

Section 40 of Treasury circular No. 300, dated July 31, 1923, provides in part as follows:

"No title passes by forged assignment of a registered bond, even though the purchaser has purchased in good faith and for value, and the Treasury Dept. cannot recognize a forged assignment for any purpose."

It will be seen from the above quoted sections that the redemption of registered bonds, the witnessing of the signatures of registered owners, and the restriction of passing of title of a forged assignment of a registered bond, have been provided for in the Treasury regulations.

Registration of a Liberty bond protects the registered owner. An invalid assignment would not convey title,

for in contemplation of law the bond remains untransferred. Treasury regulations contained in Treasury circular No. 300 dated July 31, 1923, restrict the payment of Liberty bonds to any person other than the payee, or a lawful assignee.

The Attorney General for the United States held in 36 *Opinion of Atty. Gnl.* 64, with reference to the redemption of Liberty bonds, the following:

> "These authorities clearly indicate that the United States did not undertake to pay the amount of the bond to any person other than the payee or to some person to whom the bond might be lawfully assigned, and that a purchaser of the bond upon the invalid assignment would get no title, for in contemplation of law the bond remains untransferred and retains its character as a registered bond, and the protection of registration."

Registered bonds can be redeemed only in a manner prescribed by Treasury Department regulations. Before payment can be made the bonds must be assigned to the Secretary of Treasury for payment, and the assignment must be executed as per the regulations.

Before redemption can be made, the assignee must hold a proper assignment from the registered holder of record. (Treasury Regulations Dept. circular No. 300, Sec. 27.)

Assignments of registered bonds must be made on the form appearing on the back of the bond, and unless this is strictly complied with, the bonds cannot be redeemed. (Treasury Regulations Dept. circular No. 300, Sec. 28.)

The regulations carry into execution the provisions restricting redemption of Liberty bonds. Without the formal acknowledgment of a genuine or forged signature of the registered owner, a Liberty bond would not even appear to have been assigned. Unless a Liberty bond appears to have been assigned, and the Treasury officials believe it to have been assigned, redemption cannot be made. Therefore the writing of the name of the registered owner of a Liberty bond upon the reverse side of a bond does not constitute an assignment. This rule obtains regardless of whether the signature is signed by the registered owner or by a forger.

A forgery of a genuine document must be an alteration or fabrication of an essential particular so as to give it a different importance and meaning. *U. S. v. Osgood*, 27 Fed. Cas. No. 15971-a. The defendant by doing the acts charged in the indictment, to-wit, the forging of the name of a registered owner of the bond, could not have given it a different importance or meaning.

For a false writing to be a forgery it must be of such language that it "would if genuine be apparently of some legal efficacy". (2 Bishop Crim. Law Sec. 415.) Where a writing could not defraud anyone the transaction is not a forgery. (1 Bishop Crim. Law, Sec. 748.) The writing of the name of the registered owner upon the reverse side of a liberty bond would not assign or transfer the bond and the act would not be a forgery within the meaning of 18 U. S. C. A. 73.

A "Writing" Within the Meaning of 18 U. S. C. A. 73.

It is essential to determine the meaning of the word "writing" as used in the indictments.

Query. Does the false writing of the name of the registered owner on the reverse side of a Liberty bond constitute a violation of 18 U. S. C. A. 73?

The word "writing" has been given many definitions, and it is essential to judicially construe its legal meaning as used in the indictments.

Every inscription is not a writing. A single letter of the alphabet is not a writing. A single letter of the alphabet can convey no other idea than that which belongs to it. A "writing" within the meaning of the act must be a vehicle of ideas, sufficient to give the document a different importance and meaning.

In *Teal v. Felton,* 53 U. S. 284, the Supreme court construed the meaning of "memorandum or writing" as used in Section 30 of the Act of 1825. That act was for the protection of the mails and a violation of it imposed a civil penalty upon the offender. The appellant, a postmaster, refused to deliver a newspaper to the appellee to whom it was addressed. The appellant sought to collect letter postage for the newspaper because there was inscribed a letter of the alphabet on the wrapper separate and distinct from the address. The appellee refused to pay and tendered the amount of lawful postage for a newspaper. The postmaster would not accept and retained the newspaper against the will of the appellee who sued in turn. The newspaper was retained under authority of the provisions of section 300 of the Act of 1825. In part

it provided, "If any person shall inclose or conceal a letter or other thing, or a memorandum in writing in a newspaper, etc., etc., or make any *writing* or memorandum thereon which he shall deliver in any post office, or to any person for that purpose, in order that the same shall be carried by post, free of letter postage, he shall forfeit the sum of five dollars for every offense." (Italics ours.) The question arose whether a single letter of the alphabet in addition to the address on the wrapper was a writing within the meaning of the Act. The court held that the intial was not a memorandum or writing within the meaning of the act. The court said:

> "It is not a memorandum, certainly, and a single letter of the alphabet can convey no other idea than that it belongs to it, unless it is used numerically. This is not a case in which judgment could be used to determine any fact except by some other evidence than the letter itself."

The word "writing" as used in penal statutes of the United States is not a generic term. Its meaning is limited even though not well defined. Where the Act of July 12, 1876, 19 Stat. 90 prohibited sending through the mails, "Every obscene, lewd or lascivious book, pamphlet, picture, paper, *writing,* print, etc."; (italics ours), the Supreme Court held that the word *writing* did not include a letter, *U. S. v. Chase*, 135 U. S. 255, 10 S. Ct. 756. The court said:

> "The contention on the part of the U. S. that the term 'writing', as used in this statute, is comprehensive enough to include and does include, the term 'letter,' as used in the indictment; and it is insisted, therefore, that the offense charged is that of unlawfully and knowingly depositing in the mails of

the United States an obscene, lewd, and lascivious 'writing,' etc. We do not concur in this construction of the statute. The word 'writing,' when not used in connection with analogous words of more special meaning, is an extensive term, and may be construed to denote a letter from one person to another. But such is not its ordinary and usual acceptation. Neither in legislative enactments nor in common intercourse are the two terms, 'letter' and 'writing' equivalent expressions. When, in ordinary intercourse, men speak of mailing a 'letter' or receiving by mail a 'letter,' they do not say mail a 'writing' or receive by mail a 'writing.' In law the term 'writing' is much more frequently used to denote legal instruments, such as deeds, agreements, memoranda, bonds, and notes, etc. In the statute of frauds the word occurs in that sense in nearly every section; and, in the many discussions to which this statute has given rise, these instruments are referred to as 'the writing' or 'some writing'. But in its most frequent and most familiar sense the term 'writing' is applied to books, pamphlets, and the literary and scientific productions of authors, as, for instance, in that clause in the United States constitution which provides that congress shall have power 'to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' Article 1, Sec. 8. In the statute under consideration, the word 'writing' is used as one of a group or class of words,—book, pamphlet, picture, paper, writing, print,—each of which is ordinarily and *prima facie* understood to be a publication; and the enumeration concludes with the general phrase, 'or other publication,' which applies to all the articles enumerated, and marks each with the common quality indicated. It must, therefore, ac-

> cording to a well-defined rule of construction, be a published writing which is contemplated by the statute, and not a private letter, on the outside of which there is nothing but the name and address of the person to whom it is written. We do not think it a reasonable construction of the statute to say that the vast mass of postal matter known as 'letters' was intended by congress to be expressed in a term so general and vague as the word 'writing,' when it would have been just as easy, and also in strict accordance with all its other postal laws and regulations, to say 'letters' when letters were meant; and the very fact that the word 'letters' is not specifically mentioned among the enumerated articles in this clause is itself conclusive that congress intended to exclude private letters from its operations."

It will be noted that the above case refers to a bond. However, we distinguish between bond as used in *United States v. Chase,* and the charge in the indictments of the instant case. The indictments charge the appellant with forging a signature of a registered owner of a liberty bond. The term 'writing' as used in 18 U. S. C. A. 73 does not include the false writing of the name of a registered owner on the reverse side of a liberty bond "for the purpose of obtaining, or receiving, or enabling any other person, either directly or indirectly, to obtain or receive from the United States or any of their officers or agents any sum of money."

Penal Statutes Must Be Strictly Construed.

A criminal statute must be strictly construed and if the statute is ambiguous or admits of two reasonable and contradictory constructions the statute must be construed in favor of the defendant. In *Specter v. U. S.,* 42 Fed. (2d) 937-940; C. C. A. 8, the court said:

> "There being no common law crime against the government, each case, of necessity, involves the construction of a federal statute, and no one can be punished for crime against the United States unless facts shown, plainly and unmistakably constitute an offense within the meaning of an Act of Congress. Donnelly v. United States, 276 U. S. 505, 48 S. Ct. 400, 72 L. Ed. 676; United States v. Lacher, 134 U. S. 624, 10 S. Ct. 625, 33 L. Ed. 1080; Fasulo v. United States, 272 U. S. 620, 47 S. Ct. 200, 202, 71 L. Ed. 443. It has long been the rule of both the national and state courts that penal statutes are subject to the rule of strict construction, and, *if a penal statute contains a patent ambiguity and admits of two reasonable and contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred,* and the statute will not be extended in its scope to include other offenses than those which are clearly described and provided for."

The case of *Specter v. U. S.,* was selected because it reviews the decisions of the Supreme Court relating to the construction of penal statutes. A criminal law must clearly state the persons to be punished and acts prohibited. The acts charged must clearly be within the class of acts denounced by the statutes. The context of

criminal statutes which defines offenses must be strictly construed. In *Speeter v. U. S.*, the court said:

> "As said by this court in an opinion by Judge Sandborn in First National Bank of Anamoose v. United States, 206 F. 374, 376, 46 L. R. A. (N. S.) 1139:
>
> 'A penal statute which creates a new crime and prescribes its punishment must clearly state the persons and acts denounced. A person who, or an act which, is not by the expressed terms of the law clearly within the class of persons, or within the class of acts, it denounces will not sustain a conviction thereunder. One ought not to be punished for a new offense unless he and his act fall plainly within the class of persons or the class of acts condemned by the statute. An act which is not clearly an offense by the expressed will of the legislative department before it was done may not be lawfully or justly made so by construction after it is committed, either by the enterpolation of expressions or by the expurging of some of its words by the judiciary.'
>
> In United States v. Chase, 135 U. S. 255, 10 S. Ct. 756, 758, 34 L. Ed. 117, the defendant was indicted under an act declaring that 'every * * * book, pamphlet, picture, paper, writing, print, or other publication of an indecent character' was unavailable, and the question under consideration was whether or not to send an obscene letter by mail violated this Section. In holding that the letter was not a writing within the meaning of the statute, the court said: 'We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in

ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in this statute, or implied from a fair interpretation of its context, even though they may involve the same mischief which the statute was designed to suppress.'

In Fasulo v. United States, *supra,* in an opinion by Mr. Justice Butler, it is said: 'There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute.' "

In view of the foregoing authorities 18 U. S. C. A. 73 cannot be construed to apply to the charge in the indictments of the instant case.

By sound process of reasoning the false writing of the name of a registered owner of Liberty Bonds is not "a writing" in violation of 18 U. S. C. A. 73. The false writing of the name of an owner of a registered Liberty Bond does not give the bond a different meaning or importance; title is not conveyed from the registered owner; the act is not a vehicle of ideas capable, if true, to change the relationship between the registered owner and the United States; the bond remains untransferred, retains the protection of registration and the character of a registered bond.

Argument for Group Within Second Classification.

The second classified group of counts in the indictment will be considered next. The discussion will embrace counts of indictments charging violation of 18 U. S. C. A. 73, where exhibits attached thereto, showing the photostatic copies of the reverse sides of the registered Liberty Bonds, have inscribed thereon in handwriting the names of the registered owners of the bonds, and the name of a subscribing witness in the official form prescribed upon the reverse side of the bond.

Counts of this type appear principally in indictment No. 11932.

The proposed amended assignments of errors to that type of count, are as follows:

(a) Liberty Bond No. 462452, a photostatic copy of which appears in the first count of the indictment, for value received was issued to W. H. Hawley, and registered in his name as appears from the exhibits in count one of the indictment. The bond was his property, and the signing of his name on the back of the bond would constitute an offense against the state of California, and not an offense against the United States.

(b) The indictment does not charge that the defendant, E. E. Wiley, forged or counterfeited insertions in transfer form on the reverse side of the bond. Without such insertions the said bond could not be transferred or assigned.

(c) Without the insertions in the transfer form on the reverse side of the bond the United States could not have been defrauded, for the reasons that the provisions on the reverse side of the bond restrict the transfer and assignment of the bond.

This form of count differs from counts within the first classification in that, in addition to the name of the registered owner appearing on the back of the bond, there appears the name of the vice-president of the Farmers and Merchants National Bank of Los Angeles, California, below in the transfer form, together with the date of transfer, and the corporate seal of the Farmers and Merchants National Bank of Los Angeles, California.

The indictment charges that the defendant with intent to obtain money from the United States did "forge and endorse on the said order and writing the name 'W. N. Hawley' the payee of said order and writing." The indictment does not charge the defendant with the forging or causing to be forged the signature of the vice-president of the Farmers and Merchants National Bank of Los Angeles, California, the date of transfer, and the affixing of the corporate seal. Neither does the indictment charge that the defendant induced the vice-president of the said Farmers & Merchants National Bank of Los Angeles, to witness the alleged forged signature.

It is submitted that this form of count in the indictment does not charge an offense against the United States for the reasons set forth in the argument to this form of count, coupled with the argument interposed to the first class of counts.

Argument for Group of Counts Within Third Classification.

An illustration of this type of count appears in the Fifth Count in Indictment No. 11930.

The indictment charges that the defendants "did utter and publish as true * * * forged and counterfeited orders and writings in words and figures as set out in" the other counts of the indictments "with intent then and there to defraud the United States." The error assigned for this form of count is as follows:

(a) The Fifth Count of the indictment (11930) does not charge an offense against the United States, in that the forgery upon the back of the Liberty Bond of the name H. C. Hawley is not a completion of the offense alleged in the indictment, to wit, 18 U. S. C. A. 73.

This charge alleges the uttering of forged Liberty Bonds. It is contended as heretofore set forth in this brief, that the act of forging had not been completed. Therefore, no forged bonds could have been uttered.

Answer to Appellant's Brief.

In the brief of appellant filed in the United States Circuit Court of Appeals on the 8th day of October, 1934, at the time of prior argument, reference is made to three cases upon which the prosecution relies. They are as follows: The case of,

Meadows v. U. S., 11 Fed. (2d) 718;

Mosheik v. U. S., 63 Fed. (2d) 533; and

Prussian v. U. S., 282 U. S. 675; 51 S. Ct. 223; 75 L. Ed. 610.

Each of these cases may be readily distinguished from the case at bar. The *Meadows* case involves a conspiracy, and it is admitted that the object of the conspiracy need not be fulfilled or charged in the indictment. Wherein an indictment charging a substantive offense a "straight violation" of a statute, must charge the completion of the offense. Appellant asserts that the decision of the *Meadows* case is not applicable to the indictments of his case, other than the indictment relating to the charge of conspiracy.

Prussian v. U. S. (*supra*) may be distinguished from the case at bar. The defendant, Prussian, was charged with forging a draft issued by the United States. A draft and Liberty Bond are two different forms of instrument. The former is negotiable and the latter is assignable. To forge the endorsement of a payee upon a draft would complete the offense. However. the writing of the name of the registered owner upon the reverse side of the Liberty Bond is not sufficiently complete in itself to constitute a violation of 18 U. S. C. A. 73. Therefore, the *Prussian* case is not a precedent for the case at bar.

Mosheik v. U. S. (*supra*) is a decision of the United States Circuit Court of Appeals from the Fifth Circuit. This case is the most substantial precedent against the contention of the appellant. However, this case also can be distinguished from the case at bar. The court said:

> "It is contended that merely signing the names of the payees to transfer the bond was not a forgery of the endorsement; that, unless the assignment purported to be properly acknowledged, it would be ineffectual to transfer the bonds; that therefore the United States could not be defrauded. We think the

false insertion of the names in the form of endorsement printed on the bonds was a complete forgery of a writing prohibited by the statute. The name of the assignee could be inserted by any one to whom the bond might be delivered. The acknowledgment would be a different writing. We are not dealing with the common-law crime of forgery, and definitions of that offense are not necessarily applicable. The indictment was sufficient. Meadows v. U. S., 11 F. (2d) 718; Prussian v. United States, 282 U. S. 675; 51 S. Ct. 223, 75 L. Ed. 610."

It will be noted that the authority for the decision in this case is the *Meadows* and *Prussian* cases. It has heretofore been pointed out that the indictment in the *Meadows* case charges a conspiracy, and the *Prussian* case relates to the forgery of the endorsement of a payee on a draft. It is therefore submitted that the case at bar is distinguishable from the *Meadows* and *Prussian* cases, and therefore the *Mosheik* case ought not to apply.

Conclusion.

With the false writing of the names of the registered owners Liberty bonds remain untransferred and retain the protection of registration and the character of registered bonds. The United States could not have been defrauded and therefore the indictments do not charge an offense against the United States.

Respectfully submitted,

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